

§ 100.20

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that were not complete, accurate, and current;

(ii) A subcontractor or prospective subcontractor furnished the cost data to the carrier that were not complete, accurate, and current; or

(iii) Any of these parties furnished data of any description that were not accurate.

(2) Any reduction in the negotiated cost under §100.19(c)(1) due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount by which either the actual subcontract or the actual cost to the carrier, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the carrier, provided that the actual subcontract cost was not itself affected by defective cost data.

(3) If the FBI determines under §100.19(c)(1) that a cost reduction should be made, the carrier shall not raise the following matters as a defense:

(i) The carrier or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the costs of the agreement would not have been modified even if accurate, complete, and current cost data had been submitted;

(ii) The FBI should have known that the cost data at issue were defective even though the carrier or subcontractor took no affirmative action to bring the character of the data to the attention of the FBI;

(iii) The carrier or subcontractor did not submit accurate cost data. Except as prohibited, an offset in an amount determined appropriate by the FBI based upon the facts shall be allowed against the cost reimbursement of an agreement amount reduction if the carrier certifies to the FBI that, to the best of the carrier's knowledge and belief, the carrier is entitled to the offset in the amount requested and the carrier proves that the cost data were available before the date of agreement on the cost of the agreement (or cost of the modification) and that the data were not submitted before such date. An offset shall not be allowed if the understated data were known by the carrier to be understated when the agree-

ment was signed; or the Government proves that the facts demonstrate that the agreement amount would not have increased even if the available data had been submitted before the date of agreement on cost; or

(4) In the event of an overpayment, the carrier shall be liable to and shall pay the United States at that time such overpayment as was made, with simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the carrier to the date the Government is repaid by the carrier at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

§ 100.20 Confidentiality of trade secrets/proprietary information.

With respect to any information provided to the FBI under this part that is identified as company proprietary information, it shall be treated as privileged and confidential and only shared within the government on a need-to-know basis. It shall not be disclosed outside the government for any reason inclusive of Freedom of Information requests, without the prior written approval of the company. Information provided will be used exclusively for the implementation of CALEA. This restriction does not limit the government's right to use the information provided if obtained from any other source without limitation.

§ 100.21 Alternative dispute resolution.

(a) If an impasse arises in negotiations between the FBI and the carrier which precludes the execution of a cooperative agreement, the FBI will consider using mediation with the goal of achieving, in a timely fashion, a consensual resolution of all outstanding issues through facilitated negotiations.

(b) Should the carrier agree to mediation, the costs of that mediation process shall be shared equally by the FBI and the carrier.

(c) Each mediation shall be governed by a separate mediation agreement prepared by the FBI and the carrier.

Department of Justice

§ 104.2

**PART 104—SEPTEMBER 11TH VICTIM
COMPENSATION FUND**

AUTHORITY: Title IV of Pub. L. 107-42, 115 Stat. 230, 49 U.S.C. 40101 note; Title II of Pub. L. 111-347, 124 Stat. 3623.

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Subpart A—General; Eligibility

§ 104.1 Purpose.

This part implements the provisions of the September 11th Victim Compensation Fund of 2001, Title IV of Public Law 107-42, 115 Stat. 230 (Air Transportation Safety and System Stabilization Act), as amended by the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111-347, to provide compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal during the immediate aftermath of those crashes, and to the “personal representatives” of those who were killed as a result of the crashes. All compensation provided through the Fund will be on account of personal physical injuries or death.

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§ 104.2 Eligibility definitions and requirements.

(a) *Eligible claimants.* The term eligible claimants means:

(1) Individuals present at a 9/11 crash site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes and who suffered physical harm, as defined herein, as a direct result of the crashes or debris removal;

(2) The Personal Representatives of deceased individuals aboard American Airlines flights 11 or 77 and United Airlines flights 93 or 175; and

(3) The Personal Representatives of individuals who were present at a 9/11 crash site at the time of or in the immediate aftermath of the crashes and who died as a direct result of the terrorist-related aircraft crash.

(4) The term eligible claimants does not include any individual or representative of an individual who is identified to have been a participant or conspirator in the terrorist-related crashes of September 11.

(b) *Immediate aftermath.* The term immediate aftermath means any period beginning with the terrorist-related

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